

RESOLUTION NO. RC2017-8

RESOLUTION OF THE CITY OF WEST LAFAYETTE, INDIANA, REDEVELOPMENT COMMISSION APPROVING AN AGREEMENT FOR THE DISPOSITION OF CERTAIN REAL PROPERTY LOCATED IN THE LEVEE/VILLAGE ECONOMIC DEVELOPMENT AREA AFTER THE PRIOR ACQUISITION THEREOF

WHEREAS, the City of West Lafayette Redevelopment Commission (the "Commission"), governing body of the City of West Lafayette Department of Redevelopment (the "Department") and the Redevelopment District of the City of West Lafayette, Indiana (the "Redevelopment District"), exists and operates under the provisions of I.C. 36-7-14, as amended from time to time; and

WHEREAS, the Commission proposes to dispose of certain real property (the "Real Property") located in the Levee/Village Economic Development Area ("Area") described in Exhibit A hereto (after the prior acquisition Parcel 2) pursuant to the provisions of IC 36-7-14-22, as amended; and

WHEREAS, the Commission caused two separate appraisals (the "Appraisals") to be made of the sale value of the Real Property by two independent appraisers, namely, Dale Webster d/b/a Cornerstone Appraisal and McClain Cottingham & Gilligan, LLC (collectively, the "Appraisers"); and

WHEREAS, the Common Council of the City of West Lafayette approved the purchase and sale of the Real Property at its meeting on June 5, 2017 as Resolution No. 08-17; and

WHEREAS, the Commission caused to be published in accordance with IC 36-7-14-22, as amended, and IC 5-3-1, as amended, a notice of disposition (the "Notice of Disposition") in the form attached hereto as Exhibit B; and

WHEREAS, the Commission prepared an offering sheet in the form of Exhibit C hereto, reflecting a sale price that is not less than the average of the two Appraisals and various conditions relating to the proposed purchaser's use of the Real Property; and

WHEREAS, offers for the Real Property were due not later than 8:30 a.m. on June 21, 2017 and the Commission received no responses to the Notice of Disposition;

NOW THEREFORE, BE IT RESOLVED by the City of West Lafayette Redevelopment Commission as follows:

1. The Commission hereby finds and determines that the disposition of the Real Property (after the prior acquisition of Parcel 2 by the Commission) will further the economic development purposes of the Area.

2. Beginning on July 22, 2017 the Commission may consider an offering price necessary to further the Commission's redevelopment plans. Therefore, the President of the Commission is hereby authorized and directed to enter into an agreement, substantially in the form of Exhibit D hereto, with Wabash Landing Apartment Homes, LLC to effectuate the disposition of the Real Property, with such changes therein as the President, with the advice of the Commission's counsel, may find necessary or appropriate and in furtherance of the economic development purposes of the Area, which findings will be conclusively evidenced by the President's execution of the Agreement. The Secretary of the Commission is authorized and directed to attest the President's execution of the Agreement.

3. The President is authorized and directed to take all such actions and to execute and deliver and make all necessary or desirable further agreements, certificates, documents, filings, papers and recordings as are necessary or desirable to carry out the purposes of this Resolution, in such forms as the President may deem proper, which propriety will be conclusively evidenced by their execution.

4. The foregoing recitals and all exhibits are incorporated into this Resolution by this reference. If any section, paragraph or provision of this Resolution is held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision will not affect any of the remaining provisions of this Resolution.

5. This Resolution shall be in full force and effect from and after its adoption by the Commission.

ADOPTED AND APPROVED at a meeting of the City of West Lafayette Redevelopment Commission held on July 19, 2017.

CITY OF WEST LAFAYETTE, INDIANA
REDEVELOPMENT COMMISSION

BY: _____

Lawrence T. Oates, President

ATTEST:

Johari Miller-Wilson, Secretary

EXIBIT A

WABASH LANDING APARTMENTS EXPANSION

PARCEL 2:

Lot 1D in the Amended Final Plat of Wabash Landing, Phase One, Part One, as recorded in Plat Cabinet 7, Slide 93 as Instrument No. 03046032 in the Office of the Recorder of Tippecanoe County. Located in Wabash Township, Tippecanoe County, Indiana.

PARCEL 3:

A Part of Outlot B in the Amended Final Plat of Wabash Landing, Phase One, Part One, as recorded in Plat Cabinet 7, Slide 93 as Instrument No. 03046032 in the Office of the Recorder of Tippecanoe County, more particularly described as follows: Beginning at the southwest corner of Lot 1D in said Amended Final Plat; thence South 89 degrees 37 minutes 11 seconds West 3.07 feet along a southern line of Lot 1F in said Amended Final Plat; thence North 09 degrees 30 minutes 37 seconds West 86.70 feet to the west line of said Lot 1D; thence along the said west line Southerly 87.47 feet along an arc to the right and having a radius of 350.45 feet and subtended by a long chord having a bearing of South 11 degrees 30 minutes 17 seconds East and a length of 87.24 feet; to the point of beginning and containing 290 square feet or 0.007 acres, more or less. Located in Wabash Township, Tippecanoe County, Indiana.

PARCEL 4:

A Part of Outlot C in the Amended Final Plat of Wabash Landing, Phase One, Part One, as recorded in Plat Cabinet 7, Slide 93 as Instrument No. 03046032 in the Office of the Recorder of Tippecanoe County, more particularly described as follows: Commencing at the southwest corner of said Outlot C; thence North 00 degrees 22 minutes 49 seconds West 70.00 feet along the west line of said Outlot C to the point of beginning; thence North 00 degrees 22 minutes 49 seconds West 146.76 feet along said west line; thence North 28 degrees 20 minutes 54 seconds West 26.33 feet along a western line of said Outlot C to the northwest corner of said Outlot C; thence North 89 degrees 37 minutes 11 seconds East 15.35 feet along the north line of said Outlot C; thence South 00 degrees 22 minutes 49 seconds East 170.01 feet; thence South 89 degrees 37 minutes 11 seconds West 3.00 feet; to the point of beginning and containing 654 square feet or 0.015 acres, more or less. Located in Wabash Township, Tippecanoe County, Indiana.

EXHIBIT B

NOTICE OF REQUEST FOR PROPOSALS CITY OF WEST LAFAYETTE REDEVELOPMENT COMMISSION

Notice is hereby given that the City of West Lafayette Redevelopment Commission (the "Commission") will accept sealed proposals at the office of the City of West Lafayette Department of Development (the "Department") located at the office of the Clerk of the City, Morton Community Center, 222 N. Chauncey, Room 100, West Lafayette, Indiana, up to the hour of 8:30 a.m. (local time) on June 21, 2017. Notice is further given that a public meeting of the Commission will be held on June 21, 2017, at 8:30 a.m. (local time), in the Community Room of Morton Community Center, located at 222 N. Chauncey Avenue, West Lafayette, Indiana, at which time and place the Commission shall open and consider each proposal pursuant to Indiana Code 36-7-14-22, for the purchase of certain real property being made available for development purposes in the Levee/Village Economic Development Area, said property being generally located in Wabash Landing, State Street and Tappawingo Drive, West Lafayette, Indiana, and includes < 2.0 acres.

The Offering sheet containing a detailed description of and the offering price for the property described above and terms upon which the sale shall be awarded, as well as certain limitations on the use to be made of the parcel described above, is available for review at the office of the Department, located at the office of the Clerk of the City, Morton Community Center, 222 N. Chauncey, Room 100, West Lafayette, Indiana.

Each proposal shall be executed in the manner provided for in the Offering Sheet. Pursuant to Indiana Code 36-7-14-22, any proposal submitted by a trust (as defined in Indiana Code 30-4-1-1(a)) must identify each (i) beneficiary of the trust and (ii) settlor empowered to revoke or modify the trust.

Dated this 1st day of June, 2017.

CITY OF WEST LAFAYETTE
REDEVELOPMENT COMMISSION

EXHIBIT C

OFFERING SHEET

CITY OF WEST LAFAYETTE REDEVELOPMENT COMMISSION

The City of West Lafayette Redevelopment Commission (the "Commission") is offering the property described in Exhibit A hereto (the "Offered Property") for sale (subject to the Commission's prior acquisition thereof) to the successful bidder.

The bidder or bidders shall prepare a bid for the sale of all of the Offered Property. The following terms and conditions apply to the bids:

- | | |
|-------------------------------|--|
| Minimum Offering Price: | Each bid must propose a purchase price of not less than \$1,169,000.00. |
| Required Uses: | Commercial development to build apartments to correspond with restrictions of the planned development as approved by the West Lafayette City Council on June 5, 2017 and to be approved by the Commission. |
| Conditions of Bid Acceptance: | <p>The Commission will publicly open all written offers, and the bid price will be read aloud and the bidder's general plan will then be read on June 21, 2017. The Commission will then review all proposals and make an award or reject all offers. Bid proposals must meet the following conditions:</p> <ul style="list-style-type: none">(a) The successful bidder must be prepared to close on the purchase of the Offered Property within thirty (30) days after award by the Commission.(b) The successful bidder must propose the development of the Offered Property for an apartment complex which meets the restrictions of the planned development as approved by the West Lafayette City Council on August 1, 2016 and is acceptable to the Commission.(c) No proposal will be eligible for consideration that does not meet the minimum offering price. |
| Conditions to Closing: | The Commission's obligation to convey the Offered Property to the successful bidder is subject to the following conditions: |

- (a) Acquisition of Offered Property by Commission.
- (b) Payment of the full purchase price for the Offered Property by the successful bidder at closing.
- (c) All agreements relating to the sale and use of the property will be subject to review by attorneys for the Commission to assure compliance with all applicable laws and agreements to which the Commission and City are subject.

EXHIBIT D

AGREEMENT FOR TRANSFER OF PROPERTY

THIS AGREEMENT is made and entered into as of the ____ day of July, 2017, by and among the CITY OF WEST LAFAYETTE, acting by and through its REDEVELOPMENT COMMISSION (the "Commission"), TAPAWINGO HOTEL, LLC, an Indiana limited liability company ("Hotel"), and WABASH LANDING APARTMENT HOMES, LLC, an Indiana limited liability company ("WLAH").

WITNESSETH:

WHEREAS, the Commission previously published a notice of disposition of real estate as described in the offering sheet attached hereto as Exhibit A (the "Real Property"), after the prior acquisition of Parcel 2 thereof; and

WHEREAS, the Real Property is situated within the corporate limits of the City of West Lafayette, Indiana (the "City"), and the Levee/Village Economic Development Area therein (the "Area"); and

WHEREAS, Hotel is the current owner of Parcel 2 of the Real Property; and

WHEREAS, the Commission is the current owner of Parcels 3 & 4 of the Real Property; and

WHEREAS, pursuant to such offering sheet, the Commission sought written offers for the purchase of the Real Property and the acquisition and construction of an apartment building in compliance with the planned development approved by the West Lafayette City Council on August 1, 2016 (the "Offered Property"); and

WHEREAS, no responsive offers were received by the Commission, and more than 30 days have passed since the date upon which offers were due to be submitted; and

WHEREAS, by this Agreement, WLAH represents that it will invest, or cause to be invested, at least \$1,169,000.00 (the "Investment") in connection with the acquisition and construction of an apartment building in the Area (the "Apartments"); and

WHEREAS, by this Agreement, WLAH further represents that it will create, or cause to be created, a minimum of full-time equivalent jobs at Apartments; and

WHEREAS, WLAH will redevelop empty space in the shopping complex to provide for a better use; and

WHEREAS, WLAH is making the Investment in consideration of (i) the sale of the Offered Property to WLAH at the WLAH Purchase Price specified in Section 1(b) hereof (the “WLAH Purchase Price”), and (2) the receipt of certain other economic development benefits and incentives; and

WHEREAS, the Commission desires to enter into this Agreement a) to transfer Parcels 3 & 4 to WLAH; and b) in lieu of Hotel having to convey Parcel 2 of the Real Property to the Commission and the Commission having to immediately reconvey the Offered Property to WLAH; and

WHEREAS, by this Agreement, the Commission acknowledges the Investment WLAH will make, or cause to be made, in the Area, and the jobs WLAH will create, or cause to be created, as a result thereof, and recognizes the benefits that will accrue to the City and its citizens; and

WHEREAS, by this Agreement, the Commission represents that it authorized all of the actions and transactions contemplated by this Agreement by its Resolution No. RC2017-4, adopted by the Commission on May 17, 2017, and by its Resolution No. RC2017-8, adopted by the Commission on July 19, 2017, among other things;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Conveyance; Reconveyance. By and through this Agreement:

(a) Hotel will be deemed to have sold and transferred all of its right, title and ownership interest in Parcel 2 of the Real Property to the Commission at the Commission Purchase Price, namely \$1,169,000.00, payable by the Commission as provided in Section 2 hereof; and

(b) Immediately upon the deemed transfer of Parcel 2 of the Real Property from Hotel to the Commission, the Commission will be deemed to have sold and transferred all of its right, title and ownership interest in Parcel 2 of the Real Property to WLAH; and

(c) The Commission will have sold and traferred all of its right, title and ownership interst in Parcels 3 & 4 of the Real Preoprtty to WLAH; and

(d) All of the Real Esate is to be sold at the WLAH Purchase Price, namely \$1.00.

2. Use of Tax Increment; Closing. The Commission will use, or cause to be used, not to exceed \$1,169,000.00 of the Levee/Village Tax Increment Financing District Surplus Fund to purchase Parcel 2 of the Real Property from Hotel. The execution and delivery of this Agreement

and the purchase of Parcel 2 of the Real Property and sale of the Offered Property will occur on July 22, 2017, or on such later date as WLAH, Hotel and the President of the Commission mutually agree (the "Closing"). Said Purchase Price shall be paid over a maximum of ten (10) years at One Hundred Sixteen Thousand Nine Hundred Dollars (\$116,900.00) per year provided that the increase in the real estate taxes based upon the increased assessed value is Two Hundred Thirty Three Thousand Eight Hundred Dollars (\$233,800.00) or greater.

3. No Transfer of Title to Commission; Liabilities.

(a) The parties hereto acknowledge and agree that, because the agreements set forth herein with respect to the Commission may be satisfied without (1) an actual conveyance of Parcel 2 of the Real Property from Hotel to the Commission and a reconveyance of Parcel 2 of the Real Property from the Commission to WLAH, and (2) without the exchange of deeds for Parcel 2 of the Real Property from Hotel to the Commission and for Parcel 2 of the Real Property from the Commission to WLAH (and the related responsibilities and duties with respect thereto), no actual transfer of title to Parcel 2 of the Real Property to the Commission will occur as part of this Agreement. Notwithstanding anything in this Agreement to the contrary, at the Closing, Hotel will deed Parcel 2 of the Real Property directly to WLAH and the Commission will deed Parcels 3 & 4 of the Real Property to WLAH.


(b) WLAH and Hotel understand and agree that the Commission will have no liability, including environmental liability, with respect to the purchase and sale of Parcel 2 of the Real Property and the Offered Property, respectively, as contemplated by this Agreement. WLAH agrees to hold the Commission and the City harmless from any and all liability, including environmental liability, the Commission or the City might incur as a result of the purchase and sale of Parcel 2 of the Real Property and the Offered Property, respectively, and agrees to indemnify the Commission and the City for all costs it might incur as a result of the Commission or the City being deemed to have acquired right, title or ownership interest in Parcel 2 of the Real Property or the Offered Property as a result of the purchase and sale of Parcel 2 of the Real Property and the Offered Property and agrees to indemnify the Commission and the City for all costs it might incur as a result of the same. Notwithstanding the foregoing, if any action or proceeding is brought against the Commission or the City in respect of which indemnity may be sought hereunder, the person seeking indemnification (Commission and/or City) will give notice of that action or proceeding to WLAH in writing, and WLAH, upon receipt of that notice, will have the right to assume the defense of such action or proceeding. An indemnified party (the Commission and/or the City) at its own expense may employ separate counsel and participate in the defense of such action or proceeding. WLAH will not be liable for any settlement made without WLAH's written consent.

4. Miscellaneous.

- (a) This Agreement may be executed in several counterparts, each of which will be an original, and all of which will constitute but one and the same agreement.
- (b) This Agreement will be construed in accordance with the laws of the State of Indiana.
- (c) If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity will not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.
- (d) The foregoing recitals, including the representations of the Commission, WLAH and Hotel contained herein, are essential to this Agreement and are incorporated into this Agreement by this reference.
- (e) Whenever the word "including" is used in this Agreement, it is used without intending any limitation; it does not mean "comprised of" or "consisting of." Whenever the word "parties" is used in this Agreement, it is used to mean the City and the Commission, WLAH and Hotel, and each of which is a "party."
- (f) Notices to the parties must be in writing and mailed by certified mail, return receipt requested, or delivered by hand, with a written receipt obtained from the person receiving delivery of the notice. Notices to WLAH should be directed to _____, or at such other address as WLAH may provide in writing to the Commission and the City and Hotel. Notices to Hotel should be directed to _____, or at such other address as Hotel may provide in writing to the Commission and the City and WLAH. Notices to the Commission and the City should be directed to them in care of the Clerk, City of West Lafayette, 222 N. Chauncey Ave., West Lafayette, Indiana 47906, or at such other address as the Commission and the City may provide in writing to WLAH and Hotel. Copies of all notices must also be provided to: counsel to the Commission, Thomas L. Brooks, Jr, P.O. Box 650, Lafayette, IN 47902.

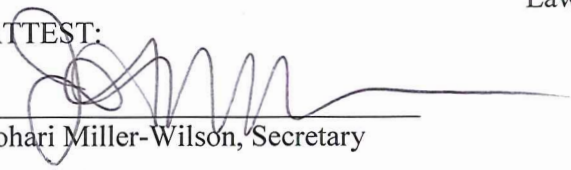
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

CITY OF WEST LAFAYETTE
REDEVELOPMENT COMMISSION



Lawrence T. Oates, President

ATTEST:



Johari Miller-Wilson, Secretary

WABASH LANDING APARTMENT HOMES,
LLC, an Indiana limited liability company

By:_____

Printed:_____

Its:_____

TAPAWINGO HOTEL, LLC, an Indiana limited
liability company

By:_____

Printed:_____

Its:_____